

Date of Decision: 7th July 1995

SPECIAL CIVIL APPLICATION NO. 1151 of 1987

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Shri D.M. Thakkar, Advocate, for the Petitioner

Shri R.J. Oza, Advocate, for Respondent No.1

Shri K.C. Shah, Asst. Government Pleader, for Respondent No.2

CORAM: A.N. DIVECHA, J.
(7th July 1995)

ORAL JUDGMENT

The order passed by the Collector of Junagadh on 13th November 1986 is under challenge in this petition under Art. 226 of the Constitution of India. By his impugned order, the Collector of Junagadh set aside resolutions on the agenda at

items Nos. 113 to 118 passed on 31st January 1986 and stayed the operation of such resolutions.

2. The facts giving rise to this petition move in a narrow compass. Respondent No.1 is a municipality. It is a joint municipality for Veraval Patan in Saurashtra. It held its meeting on 31st January 1986. One of the items on the agenda was allotment of land bearing survey No. 1536 admeasuring 1462.6 square meters in Veraval ('the disputed land' for convenience. By its resolution No. 545 passed on 31st January 1986 in the meeting, respondent No.1 allotted the disputed land to the petitioner. It is a case of the petitioner that thereafter a sale deed was also executed and its possession was taken by the petitioner. It appears that some interested persons moved the Collector of Junagadh with a grievance that respondent No.1 could not have allotted lands to anyone by its resolutions passed at the meeting held on 31st January 1986. Thereupon the proceeding for cancellation of the relevant resolutions passed by respondent No.1 at its aforesaid meeting were initiated. The petitioner appears to have come to know of the said proceedings. It therefore moved an application some time in August 1986 through its advocate for being joined as a party to the proceeding as it was one of the allottees of respondent No.1 Municipality. Its copy is at Annexure A to this petition. It appears that that application was not taken into consideration at all. Thereafter, by his order passed on 13th November 1986, the Collector of Junagadh in exercise of his powers under sec. 258 of the Gujarat Municipalities Act, 1963 ('the Act' for brief) set aside all the relevant resolutions passed by respondent No.1 municipality in its meeting held on 31st March 1986 allotting different parcels of land to different persons including to the petitioner. Its copy is at Annexure B to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Art. 226 of the Constitution of India for questioning its correctness.

3. It is the case of the petitioner that, pursuant to the aforesaid resolution passed by respondent No.1 allotting the disputed land to the petitioner, the necessary sale document was also executed and its possession was taken over by the petitioner. It is the case of the petitioner that thereafter some construction was also made therein. In that view of the matter, runs the submission of Shri Thakkar for the petitioner, the Collector could not have set aside the concerned resolution of respondent No.1 in view of the binding Division Bench ruling of this court in the case of Raghavbhai Arjanbhai through his Power of Attorney Vasantrao Pragjibhai Patel and Anr. v. Amreli Nagarpalika and Anr. reported in 1994(2) 35(2) G.L.R. 1117. As against this,

Shri Shah for respondent No.2 has urged that the finding of the Collector in the impugned order at Annexure B to this petition is that the land in question does not belong to respondent No.1 Municipality. In that view of the matter, According to Shri Shah for respondent No.2, the aforesaid binding Division Bench ruling of this court is distinguishable and the Collector's order at Annexure B to this petition cannot and need not be upset.

4. It transpires from the impugned order at Annexure B to this petition that the Collector has recorded a finding that the land in question did not belong to respondent No.1 Municipality but it belongs to the Government. It however does not become clear from his order as to on what basis he has recorded that finding. When respondent No.1 Municipality allotted some land to certain persons, ordinarily it can be presumed that the concerned municipality owns such land. As a responsible local authority, no municipality would allot or grant any land to any one unless such land belongs to it. In that view of the matter, it was the duty of the Collector of Junagadh to have recorded reasons in support of his finding that the land in question did not belong to respondent No.1 Municipality but belonged to the Government. Since this is not done, that finding cannot be accepted and the matter will have to be remanded to the Collector of Junagadh to restore the proceeding to file for his fresh decision according to law with respect to the question whether or not the land in question belong to respondent No.1 Municipality. If necessary, an enquiry under sec. 37(2) of the Bombay Land Revenue Code, 1879 may also be instituted.

5. If the land is found belonging to respondent No.1 Municipality, while deciding the validity or otherwise of the resolutions in question qua the petitioner alone, the Collector of Junagadh shall keep in mind the aforesaid binding Division Bench ruling of this court. In case the land is found belonging to the Government, it would be open to the petitioner to apply for its allotment to the concerned authority and such application made by the petitioner will be considered on its own merits uninfluenced by any other factor in the matter. Since the petitioner did apply for being joined as a party to the proceeding, an opportunity of hearing may be given to the petitioner while considering the validity or otherwise of the resolution granting land in favour of the petitioner.

6. In the result, this petition is accepted to the extent indicated in this judgment. The order passed by the collector on 13th November 1986 under sec. 258 of the Act at Annexure B to this petition is quashed and set aside qua the petitioner. The matter is remanded to the Collector of

Junagadh for restoration of the proceeding qua the petitioner to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs. The petitioner is directed not to transfer the disputed land in any manner in favour of anyone.
